

MEMORANDUM OF UNDERSTANDING

between

ENVIRONMENTAL PROTECTION AGENCY REGION 6

and

THE DEPARTMENT OF THE INTERIOR

BUREAU OF LAND MANAGEMENT

New Mexico State Office

for

**CERTAIN URANIUM MINE PROPERTIES LOCATED IN THE
SAN MATEO WATERSHED**



648520

I. Recitals

- A. The purpose of this Memorandum of Understanding (MOU) is to provide a framework for the U.S. Environmental Protection Agency (EPA), Region 6, and the United States Department of the Interior, Bureau of Land Management, New Mexico State Office (BLM), to coordinate response actions at specified properties within the San Mateo Watershed portion of the Grants Mining District in New Mexico, as identified on Attachments A, B, and C. In the *Assessment of Health and Environmental Impacts of Uranium Mining and Milling for the Grants Mining District, New Mexico Five-Year Plan, August, 2010*, the assessment and clean-up of legacy uranium mines was identified as a critical component. This MOU will further the understanding of the risk posed by these legacy mines.
- B. This MOU is intended to implement, and to be consistent with the "Statement of Principles for Collaborative Decision Making at Mixed Ownership Sites" (Statement of Principles) executed by the EPA, the United States Department of Agriculture (USDA), and the United States Department of the Interior (Interior) on October 23, 2007 (OSWER Directive 9200.06-1/ECM07-3). In that Statement of Principles, the parties recognize that, to expeditiously and efficiently implement the necessary response actions at mixed ownership sites, they should coordinate their respective authorities under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. §§ 9601 *et seq.* The parties agree to make every effort to harmonize this MOU with the Statement of Principles. As between the parties to this MOU, however, in the case of a conflict, this MOU controls.
- C. Pursuant to CERCLA, the President has authority to respond to releases of pollutants, contaminants, and hazardous substances to protect the public health or welfare or the environment.

- D. Pursuant to Executive Order 12580, as amended by Executive Order 13016, the President delegated authority to conduct various activities under CERCLA to several executive departments and agencies, including EPA and Interior. These activities include investigations and other response actions (42 U.S.C. § 9604), abatement actions (42 U.S.C. § 9606), cost recovery (42 U.S.C. § 9607), and entering into agreements with potentially responsible parties (PRPs) (42 U.S.C. § 9622).
- E. The Secretary of the Interior has redelegated certain of the authorities under Executive Order 12580 to the BLM with respect to property under BLM jurisdiction, custody, or control (hereinafter referred to as BLM lands). The BLM is, with certain limitations, delegated the President's CERCLA section 104 response action authority where a release or threat of release of a hazardous substance or pollutant or contaminant is on, or the sole source of the release is from, BLM lands. Executive Order 12580 § 2(e)(1) and 4(b)(1).
- F. The EPA has been delegated much of the President's CERCLA authority where a release or threat of release of a hazardous substance or pollutant or contaminant is on private property.
- G. The properties identified on Attachment A are BLM lands at which releases or threatened releases of hazardous substances, pollutants, or contaminants are located entirely on, or the sole source of the release is from, BLM lands.
- H. The properties identified on Attachment B are mixed ownership lands at which releases or threatened releases of hazardous substances, pollutants, or contaminants are located partially on, or the source of the release is partially from, both private lands and BLM lands. The BLM portions of these properties are administered by the BLM District Office in Albuquerque.
- I. The properties identified on Attachment C are split estate lands, on which BLM retains a mineral interest but does not hold a surface estate.
- J. The EPA and the BLM have determined that response actions may be needed at some or all of the properties listed on Attachments A, B, and C to further investigate releases or threatened releases or to address potential threats to human health and/or the environment. The EPA and the BLM plan to address releases/threats of releases of hazardous substances on or from the properties on Attachment B through the coordinated exercise of the agencies' respective CERCLA authorities. The BLM plans to address releases/threats of releases of hazardous substances on or from some or all of the properties on Attachment A through the exercise of its CERCLA or other authorities. The EPA plans to address releases/threats of releases of hazardous substances on or from the properties on Attachment C and other privately held properties not listed in this Agreement.
- K. The EPA and the BLM recognize that implementing CERCLA response actions at these properties within the San Mateo watershed of the State will require coordinating the agencies' respective use of their CERCLA authorities. The EPA and the BLM will need

to communicate a coordinated position to potentially responsible parties, the State of New Mexico, including the New Mexico State Land Office, and others, as set forth herein.

- L. This MOU is not intended to address coordination regarding assessing damages for injuries to natural resources.

II. Agreements

- A. The EPA and the BLM have designated the following persons to be each agency's Project Coordinator (PC) responsible for the day to day coordination, communication, and decisions regarding the exercise of the agencies' respective authorities at and affecting the specified sites within the San Mateo watershed:

EPA

Lisa Marie Price
Grants Mining District Coordinator
USEPA, Region 6, 6SF-TR
1445 Ross Avenue
Dallas, TX 75202-2733
Phone: (214) 665-6744
Fax: (214) 665-6660
E-mail: price.lisa@epa.gov

BLM

William Auby
AML Program Lead
New Mexico State Office
Bureau of Land Management
301 Dinosaur Trail
P. O. Box 27115
Santa Fe, NM 87502-0115
Phone: (505) 954-2159
Fax: (505) 954-2079

If the EPA or the BLM change their representatives, the agency making the change will notify the other agency in writing as soon as possible.

- B. The BLM will establish priorities for responding to the properties identified on Attachment A. The EPA and the BLM will meet at least annually to establish joint priorities for properties identified on Attachment B. The agencies will strive to develop a coordinated, prioritized project list for the properties identified on Attachment B. For properties identified on Attachment C and all privately-owned properties within the San Mateo watershed, the EPA will be solely responsible for establishing the priorities and developing projects

- C. Consistent with the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), the BLM is the lead agency for the properties listed on Attachment A. The EPA and the BLM share lead agency responsibilities at the properties listed on Attachment B and agree to designate which agency will undertake primary responsibility on a day-to-day basis for each property, on a site by site basis. Designation of the agency undertaking primary responsibility for each property identified on Attachment B will take the form of a letter agreement.
- D. The EPA and the BLM agree that all CERCLA response actions shall be conducted in accordance with the requirements of CERCLA and the NCP.
- E. The parties anticipate that, when undertaking response action pursuant to this MOU, the EPA ordinarily will be responsible for the costs associated with response actions on, and waste removed from, private lands, and the BLM will be responsible for the costs associated with response actions on, and waste removed, from BLM lands; provided that neither party waives, and each does specifically reserve, any and all rights, causes of action, or defenses.
- F. The BLM PC shall coordinate with the EPA PC and shall meet no less often than annually to discuss response activities taken or planned by the BLM for each property listed on Attachments A and to discuss activities taken or planned by the EPA for each property listed on Attachment C. At the EPA PC's request, the BLM PC shall provide the EPA with copies of all data, studies, or other reports pertaining to response activities on properties listed on Attachment A and upon the BLM's request, the EPA shall provide such information pertaining to response activities on properties listed on Attachment C.
- G. The EPA and the BLM PCs shall coordinate with each other to implement response activities at each property listed on Attachment B. Responsibility for achieving such coordination rests with the agency that is designated as primarily responsible on a day-to-day basis for each such property. This coordination shall include reasonable prior notice of, and an opportunity to participate in, any scheduled meetings related to activities at each property, an opportunity to participate in any scheduled meetings with contractors, the State of New Mexico, or any significant on-site activities. In most cases, reasonable prior notice shall be considered fourteen (14) days. In the event that a meeting needs to be scheduled on shorter notice, the BLM or the EPA PC shall contact his/her counterpart and shall determine the counterpart's availability prior to scheduling the meeting.
- H. A schedule of activities for each Attachment B property will be established by mutual agreement of the EPA and the BLM. A schedule of activities for Attachment A properties will be established by the BLM. A schedule of activities for Attachment C properties will be established by the EPA. The schedule will be for planning purposes and will be updated periodically to reflect actual progress on work at each property and current projections.
- I. The EPA and the BLM will supply to each other copies of all documents related to response actions on Attachment B properties. Such documents shall include, but not be

limited to, project proposals, sampling and analysis plans and work plans, and enforcement documents. Also, the EPA and the BLM PCs will provide each other with copies of documents needed to fulfill the purposes of this agreement. The EPA and the BLM PC will cooperatively determine which documents related to each Attachment B properties are to be copied and provided to the other agency, either directly by the agencies or by third parties.

- J. The EPA and the BLM PCs should communicate regularly regarding Attachment B properties to review work status and resolve any existing or anticipated technical issues. Monthly status calls will be held and will include the EPA and the BLM PCs. PRP and contractor representatives will be included when appropriate. When on-site work is in progress for Attachment B properties, these calls may be held at weekly intervals, if necessary.
- K. The EPA and the BLM shall develop a coordinated position on enforcement against any PRPs at each property, whether on Attachment A, Attachment B, Attachment C or wholly privately held.
- L. For response actions on properties listed on Attachment B, the EPA and the BLM designees will co-sign or concur on technical correspondence, including, but not limited to, comments on deliverables that might be required from PRPs, and approval of sampling and analysis plans.
- M. For privately held properties and for properties listed on Attachments A and C, the EPA and the BLM shall coordinate on major decision points as set forth below. For properties on Attachment B, the parties shall reach consensus on the major decision points and documents, as set forth below. In the event the agencies' PCs are unable to agree with respect to any of these decision points, such dispute shall be addressed pursuant to the provisions of Section III (Dispute Resolution) of this MOU:
 - 1. The scope of work to be performed and estimated costs;
 - 2. Project management procedures and contracts;
 - 3. Project design and construction specifications;
 - 4. Enforcement activities against potentially responsible parties;
 - 5. Engineering Evaluation/Cost Analyses and Remedial Investigation/Feasibility Studies;
 - 6. Draft and final Risk Assessments;
 - 7. Action Memoranda, Proposed Plans, and Records of Decision, including establishment, where appropriate, of a repository to manage remediation wastes;

8. Community relations activities;
 9. Certifications of completion issued for response actions at the Site;
 10. Long term operations and maintenance/post removal site control; and
 11. Future response actions in the event of a remedy failure.
- N. For purposes of coordination and concurrence on major decision points and documents as set forth above, the parties will provide comments within 30 days of their receipt of the deliverables relating to those decision points and documents, unless some other time frame is mutually agreed upon. If the Project Coordinators cannot agree on a review period, the issue will be subject to dispute resolution.
- O. The BLM PC should advise the EPA PC regarding any issues and concerns of special interest to the BLM. The BLM PC will assist the EPA PC in identifying and communicating with BLM personnel who can provide information concerning the properties listed on Attachment B and C, as needed. The EPA PC should advise the BLM PC regarding any issues and concerns of special interest to the EPA. The EPA PC will assist the BLM PC in identifying and communicating with EPA personnel who can provide information concerning the properties listed on Attachments A and B.
- P. Resolution of and communication regarding legal issues will be coordinated among EPA counsel and the attorneys in the Solicitor's Office of the Department of the Interior and, as appropriate, Department of Justice attorneys.

III. Dispute Resolution

- A. Informal dispute resolution, through consultation between the EPA and the BLM PCs, should resolve the vast majority, if not all, technical issues between the EPA and the BLM.
- B. If the EPA and the BLM PCs do not reach agreement on a disputed item arising from activities at any of the properties listed on Attachment B, either agency may issue a notice of dispute to elevate the issue for resolution to the Deputy State Director for Minerals, BLM and the Division Director for the Superfund Division within the EPA Region 6. In the event the Deputy State Director and Division Director are unable to resolve the dispute within thirty (30) days of elevation, the issue will be further elevated to the State Director, BLM and to the Regional Administrator for the EPA.
- C. In reaching a final decision, when the EPA and the BLM do not agree, the BLM will have the responsibility, consistent with the NCP, for making decisions relating to properties on Attachment A, and the EPA will have responsibility, consistent with the NCP, for making decisions at privately held properties. For properties on Attachment B, if the parties cannot reach agreement, the agencies recognize that no one agency should unilaterally make final determinations. Where CERCLA authority is being employed, all

decisions must be consistent with CERCLA and the NCP. On such properties, if either the EPA or the BLM determines that a final decision has been made that is inconsistent with CERCLA or the NCP, that agency has the option of withdrawing from this MOU.

IV. Limitations

- A. The BLM and the EPA reserve their rights and authorities under CERCLA, as well as other laws, the NCP, and applicable Executive Orders. No provision of this MOU may be used to limit those rights and authorities or to prejudge what those rights and authorities may be.
- B. The BLM and the EPA have incurred and will continue to incur response costs in the conduct and/or oversight of CERCLA response actions. The BLM and the EPA agree to conduct site activities in such a manner as to maximize performance of the work and payment of response costs of both agencies by PRPs.
- C. Nothing in this MOU shall be considered as obligating the EPA or the BLM to expend, or as involving the United States in, any contract or other obligation for the future payment of money. The Parties recognize that each must operate within the requirements of the federal budget process and legal restrictions concerning obligations of funds. No provision of this MOU shall be construed to require the BLM or the EPA to obligate or pay funds in contravention of the Anti-Deficiency Act, 31 USC § 1341 or applicable appropriations from Congress.
- D. This MOU is neither a fiscal nor a funds obligation document. Any endeavor involving reimbursement, contribution of funds, or transfer of anything of value between the parties to this MOU will be handled in accordance with applicable laws, regulations, and procedures including those for Government procurement. Such endeavors will be outlined in separate agreements that shall be made in writing by representatives of the parties and shall be independently authorized by appropriate statutory authority. This instrument does not provide such authority.
- E. This MOU is not intended to and does not create any right, benefit or trust obligation, either substantive or procedural, enforceable at law or in equity, by any party against the United States, its departments, agencies, instrumentalities or entities, its officers, employees, agents, or any other person.
- F. Nothing in this MOU shall restrict the BLM or the EPA from participating in similar activities with other public or private agencies, organizations, and individuals.
- G. Either party may terminate this MOU upon 30 days written notice. Prior to termination, this MOU may be modified or extended only upon the written agreement of both parties.
- H. This MOU may be executed in counterparts by each of the signatories. Each of the counterpart documents shall be deemed an original, but together shall constitute one and the same instrument.

Attachment A

BLM surface/BLM minerals

Barbara J. No. 1

Barbara J. No. 2

Barbara J. No. 3

Beacon Hill

Beacon Hill Gossett

Blue Peak

Bobcat

Cedar

Davenport

Flat Top

Lone Pine

Malpais

Mesa Top

Piedre Trieste

Spencer

T-20

MMD ID No.

NM0082

NM0055

NM0049

NM0084

NM0083

NM0085

NM0141

NM0117

NM0086

NM0090

NM0123

NM0054

NM0096

NM0157

NM0098

NM0072

Attachment B

Mixed BLM/private Surface/mineral ownership

MMD ID No.

Black Hawk, Bunney, Red Bluffs

NM0074

Dog

NM0043

Flea

NM0068

Red Bluffs Nos 1, 2, 3, 4, 5, 9

NM0077

Section 17

NM0021

Section 19

NM0036

Tom

NM0127

Attachment C

Private surface/BLM minerals

Christmas Day

Gay Eagle

Hogan

Last Chance

MMD ID No.

NM0119

NM0121

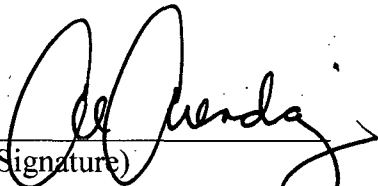
NM0091

NM0122

I. This MOU is effective upon the date signed by the last of the parties.

The undersigned parties hereby agree to the terms and conditions of this Memorandum of Understanding.

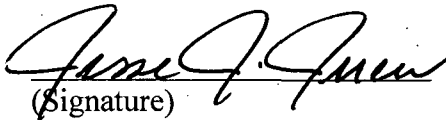
**UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY**

By: 
(Signature)

Al Armendariz
(Name)
Regional Administrator
USEPA Region 6

9/6/2011
(Date)

**UNITED STATES DEPARTMENT OF
THE INTERIOR,
BUREAU OF LAND MANAGEMENT**

By: 
(Signature)

Jesse J. Juen
(Name)
State Director
BLM, New Mexico

8/16/2011
(Date)